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Attorneys for Defendants
STATE OF HAWAII,
DEPARTMENT OF EDUCATION
and SARAH GRONNA

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 17 2006

at 2 o'clock and 32 min. P.M.
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

ROBERT SHEREZ,

Plaintiff,

vs.

STATE OF HAWAII DEPARTMENT
OF EDUCATION; PATRICIA
HAMAMOTO, Superintendent of
Hawai'i Schools, MEREDETH
MAEDA, Principal, Castle High
School; SARA GRONNER OR
GRONNA, Vice Principal of Castle
High School,

Defendants.

CIVIL NO. 04-00390 HG-KSC

DEFENDANTS DEPARTMENT OF
EDUCATION, STATE OF
HAWAII; PATRICIA
HAMAMOTO, IN HER OFFICIAL
CAPACITY; SARAH GRONNA
AND MEREDITH MAEDA'S
ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT
FILED ON DECEMBER 21, 2005;
CERTIFICATE OF SERVICE

DEFENDANTS DEPARTMENT OF EDUCATION, STATE OF HAWAII,
PATRICIA HAMAMOTO, IN HER OFFICIAL CAPACITY, SARAH GRONNA
AND MEREDITH MAEDA'S ANSWER TO PLAINTIFF'S SECOND
AMENDED COMPLAINT FILED ON DECEMBER 21, 2005

Defendants Department of Education, State of Hawai'i; Patricia Hamamoto, in her official capacity; Sarah Gronna and Meredith Maeda (hereinafter "Defendants"), by and through their attorneys, Mark J. Bennett, Attorney General, James E. Halvorson, Nelson Y. Nabeta, Deputy Attorneys General, hereby files their answer to the Second Amended Complaint filed herein by Plaintiff Robert Sherez (hereinafter "Plaintiff") on December 21, 2005, as follows:

FIRST DEFENSE:

The Second Amended Complaint fails to state a claim against Defendant upon which relief can be granted:

SECOND DEFENSE:

1. Defendants deny any repeated denial of assignments for the tutoring of female students in 2003, on the basis of gender. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 1 of the Second Amended Complaint, and therefore denies the same.

2. Defendants admit that the Department of Education is an agency of the State of Hawai'i but Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 2 of

the Second Amended Complaint because of the manner in which the allegations are drafted and therefore denies same.

3. Defendants admit that Patricia Hamamoto is the Superintendent of Education for the State of Hawai'i, but Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of Paragraph 3 of the Second Amended Complaint because of the manner in which the allegations are drafted and therefore denies same.

4. Defendants admit that Meredith Maeda is the principal of Castle High School, but Defendants deny the remaining allegations of Paragraph 4 of the Second Amended Complaint.

5. Defendants admit that Sarah Gronna, at one time served as a vice principal of Castle High School, but Defendants deny the remaining allegations of Paragraph 5 of the Second Amended Complaint.

6. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraphs 6, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 30 and 31 of the Second Amended Complaint, in part because of the manner in which the allegations are drafted, and therefore denies the same as to the Defendants.

7. Defendants deny the allegations contained in Paragraphs 8, 9, 10, 11, 12, 13, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 of the Second Amended Complaint.

8. Defendants deny that they had breached any terms of statutes or rules or regulations in the assignment of tutors for female students. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Paragraph 7 of the Second Amended Complaint, because of the manner in which the allegations are drafted and therefore denies same.

9. In response to Paragraph 27 of the Second Amended Complaint, Defendants incorporate by reference the responses to Paragraphs 1 through 26.

10. Defendants deny all remaining allegations not specifically admitted above.

THIRD DEFENSE:

Plaintiff failed to exhaust his administrative remedies.

FOURTH DEFENSE:

The claims are barred by Eleventh Amendment Immunity.

FIFTH DEFENSE:

The claims are barred by both absolute and qualified immunities.

SIXTH DEFENSE:

The claims are barred by sovereign immunity.

SEVENTH DEFENSE:

All claims based upon acts or omissions that constitute the exercise of discretionary functions are barred.

EIGHTH DEFENSE:

The claims are not justiciable.

NINTH DEFENSE:

Plaintiff failed to mitigate his damages, if any.

TENTH DEFENSE:

Plaintiff's exclusive remedies for the wrongs alleged are contained in a collective bargaining agreement; Plaintiff failed to exhaust the remedies available under the collective bargaining agreement and Hawai'i Revised Statutes Chapter 89.

ELEVENTH DEFENSE:

The claims are barred by applicable statute of limitations.

TWELFTH DEFENSE:

Defendants are not subject to punitive damages.

THIRTEENTH DEFENSE:

Plaintiff's claims are barred by the exclusive remedies provisions of the Hawai'i's workers' compensation law.

FOURTEENTH DEFENSE:

Plaintiff unreasonably failed to utilize processes and procedures made available by his employer that would have prevented or corrected the injuries of which Plaintiff complains.

FIFTHTEENTH DEFENSE:

The Doctrine of Estoppel bars the claims asserted by the Plaintiff.

SIXTEENTH DEFENSE

The Court lacks subject matter jurisdiction to adjudicate the claims by the Plaintiff.

SEVENTEENTH DEFENSE:

The Court lacks personal jurisdiction over the Defendants.

EIGHTEENTH DEFENSE:

The claims are barred by immunities that protect public officials and employees.

NINETEENTH DEFENSE:

The Second Amended Complaint is void because it contains matters that do not conform to the Court's leave to file a second amended complaint.

WHEREFORE, Defendants prays for the following:

1. That the Second Amended Complaint be dismissed, or in the alternative that Plaintiff take nothing by the complaint;
2. That Defendants be awarded its costs, including reasonable attorneys fees; and
3. That the Court award such further relief as may be proper.

DATED: Honolulu, Hawai'i, January 17, 2006.



NELSON Y. NABETA
Deputy Attorney General

Attorney for Defendants

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Attorney General of Hawai'i

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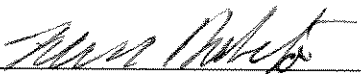
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 17, 2006, a copy of Defendants Department of Education, State of Hawai'i, Patricia Hamamoto, in her official capacity, Sarah Gronna and Meredith Maeda's Answer to Plaintiff's Second Amended Complaint filed on December 21, 2005 was duly served via U.S. mail, postage prepaid as follows:

ANDRE S. WOOTEN, ESQ.
Century Square, Suite 1909
1188 Bishop Street
Honolulu, Hawai'i 96819

Attorney for Plaintiff
ROBERT SHEREZ

DATED: Honolulu, Hawai'i, January 17, 2006



NELSON Y. NABETA
Deputy Attorney General